Panel Decision for dispute CAC-ADREU-004192

Case number	CAC-ADREU-004192
Time of filing	2007-02-20 10:10:52
Domain names	commend.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	COMMEND Leasing GMBH, COMMEND Leasing GMBH

Respondent

Organization / Name	Office2Office PLC, alex french

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

No legal proceedings are known to the Panel in connection with the disputed domain name.

FACTUAL BACKGROUND

Complainant requests the transfer of the domain name “Commend”.

A. COMPLAINANT

According to Complainant, he is the owner of the worldwide trademark ”COMMEND“. Therefore, he is of the opinion that the registration of the domain name "commend.eu" in favour of Respondent was an infringement of his trademark rights.

B. RESPONDENT

The Respondent did not react to the notification of the commencement of ADR Proceeding and did not file a response.

DISCUSSION AND FINDINGS

1. The Complainant submitted his Complaint by e-mail and in hardcopy. It was received by the Czech Arbitration Court on 2007-01-17 (e-mail) and on 2007-03-05 (hardcopy).

2. The time of filing of this complaint was 2007-02-20.

3. The Complainant also transferred the certificates of registration of the expression “Commend” as a Community trademark (registration no. 000609842 and 001020379 of OHIM) and the international trade mark (registration no. 711552 of WIPO) proving that he is the owner of the Community and international trademark “Commend”.

4. The formal date of the commencement of the ADR proceedings was 2007-03-08.

5. The Czech Arbitration Court notified the Respondent on the same day the proceedings commenced.

6. It also informed the Respondent that he must submit a response within 30 working days from the delivery of the aforementioned notification and that he will be considered in default if he does not file the response on time.

7. According to the notification of the Czech Arbitration Court on 2007-04-25, the Respondent did not respond.

8. According to Paragraph B 10 (a) of the ADR Rules, the Panel shall proceed to a decision of the Complaint if a party does not comply with any of the time periods established by the Rules. The Panel may consider the failure to comply as grounds to accept the claims of the other party.

9. Paragraph B 10 (b) of the ADR Rules provides that the Panel shall qualify the fact that a party does not comply with any provision of the ADR Rules as it considers appropriate.

10. Following Paragraph B 11 (a) of the ADR Rules, the Panel shall rule on a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules.

11. In this case, the Respondent did not react to the commencement of ADR Proceeding. Also, he did not file a response, despite the Czech Arbitration Court having provided him with all the relevant information— and especially with it's notification of 2007-03-08 informing the Respondent of the consequences of a default.

12. Paragraph B 11 (b) of the ADR Rules states that the remedies available for the Complainant (since the Respondent is the domain name holder of the relevant domain name) shall be limited (i.a.) to the transfer of the disputed domain name to the Complainant, only when the Complainant satisfies the general eligibility criteria for registration set forth in Paragraph 4(2)(b) of Regulation (EC) No. 733/2002.#13;

13. The Complainant is a company based in Salzburg, i.e., within the EC. Therefore, it fulfills the criteria mentioned in Paragraph 4(2)(b) of Regulation (EC) No. 733/2002.

14. According to Paragraph B 11 (d) (1) of the ADR Rules, a Complainant would in general have had to prove that
(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either
(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) The domain name has been registered or is being used in bad faith.

15. The Complainant did not mention these issues in his Complaint and did not – formally – prove the existence of the above-mentioned reasons. Regardless of this fact, the Panel followed Paragraph B 10 (a) of the ADR Rules and considers the failure of Respondent to file a response as reason to accept the claim of Complainant. Furthermore, the documents transferred together with the Complaint do - in the opinion of the Panel - give an indication that the circumstances as mentioned in Paragraph B 11 (d) (1) have been established.

16. The Panel evaluates these facts in accordance with Paragraph B 10 (a) and (b) and Paragraph B 11 (a) of the ADR Rules and has decided to accept the claim of Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name COMMEND be transferred to the Complainant.

PANELISTS

Name	**Christoph Haidlen**

DATE OF PANEL DECISION 2007-05-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. The Complainant did – together with his complaint - provide certificates of registration showing that he is the owner of the Community and international trademark "Commend".

2. The Czech Arbitration Court notified the Respondent of the commencement of the proceedings.

3. Also, it informed the Respondent that he must submit a Response within 30 working days and that he will be considered in default if he does not file the Response on time.

4. The Respondent failed to submit a Response.#13;

5. The Panel evaluates these facts in accordance with Paragraph B 10 (a) and (b) and Paragraph B 11 (a) of the ADR Rules and has decided to accept the claim of Complainant.

6. The domain name “Commend” is to be transferred to Complainant.